

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



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Joint Application of Southern California Edison
Company (U338E) and San Diego Gas & Electric
Company (U902E) For the 2015 Nuclear
Decommissioning Cost Triennial Proceedings.

Application 16-03-004
(Filed March 1, 2016)

PREHEARING CONFERENCE STATEMENT OF
THE UTILITY REFORM NETWORK



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PREHEARING CONFERENCE STATEMENT OF THE UTILITY REFORM NETWORK

Pursuant to the May 10, 2016 Ruling of Administrative Law Judge Maribeth Bushey, The Utility Reform Network (TURN) hereby submits this Prehearing Conference Statement in A.16-03-004. TURN addresses each of the items enumerated in the Ruling in the following sections.

I. CONSOLIDATION OF PROCEEDINGS

TURN strongly supports consolidation of all active proceedings relating to nuclear decommissioning costs in order to ensure consistent and coordinated resolution of common issues of fact and law. Specifically, this application should be consolidated with A.16-03-006 (PG&E Nuclear Decommissioning Cost Triennial Proceeding) and the 2014 SONGS reasonableness review applications (A.15-01-014/ A.15-02-006). The consolidation of A.16-03-004 and A.16-03-006 is consistent with past practice and would minimize the need to engage in duplicative litigation over similar legal and factual issues.

The consolidation of A.15-01-014 and A.15-02-006 with this proceeding is reasonable because the 2014 decommissioning costs incurred at SONGS should be considered as part of the project-based milestones that are to be developed in this proceeding. Consideration of the 2014 costs in isolation would frustrate the ability of parties to propose a comprehensive set of milestones that pertain to all costs submitted for a reasonableness review. The project-based milestone approach includes costs incurred over multiple years and is fundamentally incompatible with the annual reasonableness review proposed by SCE and SDG&E in A.15-01-014 and A.15-02-006.

II. REPORTING OF THE MEET AND CONFER

TURN participated in the meet and confer and suggested edits to the report submitted today by SCE. To the extent that the Commission seeks additional comments on any disagreements identified in the report but not addressed in this Prehearing Conference statement, TURN is prepared to discuss any relevant disputes at the June 13th Prehearing Conference.

III. LIST OF SPECIFIC ISSUES TO BE DECIDED

TURN generally agrees with the listing of specific issues to be decided as outlined in the meet and confer report. However, there are two specific issues listed as “disputed” that may benefit from additional explanation. These two issues are addressed in the following subsections.

A. Reasonableness of 2009-2012 SONGS 1 costs

TURN’s protest urges the Commission to direct SCE and SDG&E to remove the portion of their application seeking approval for the reasonableness of \$13.9 million in SONGS 1 decommissioning costs incurred between January 1, 2009 and December 31, 2012.¹ The Commission previously denied recovery of these costs from the trust funds (and directed SCE to return already withdrawn funds to the trusts) because SCE failed to demonstrate that the work was reasonable.² There is no basis for the Commission to reconsider the reasonableness of these costs for a second time in the form of a “do over” and nothing in either D.14-12-082 or any ruling subsequently issued by the Commission suggests otherwise.

SCE filed for rehearing of D.14-12-082 claiming legal defects relating to disallowance of these costs and expressed concern that the Decision “could be

¹ TURN protest, pages 1-4.

² D.14-12-082, page 49; Ordering Paragraph 1.

read to preclude cost recovery”.³ Since the Commission has not yet acted on SCE’s rehearing request, the relief sought by SCE and SDG&E in this case is barred by §1709 of the Public Utilities Code.⁴

In response to protests, SCE and SDG&E argue that TURN previously supported relitigating the reasonableness of these costs in the 2015 NDCTP.⁵ Their pleading selectively quotes from statements made by TURN at the Prehearing Conference in A.15-01-014 and omits the statement made by TURN just prior to the one quoted in the utility response to protests:

We strongly oppose the utility proposal to look at SONGS 1 costs in this proceeding. We have a different understanding of the decision that was issued in December by the Commission. Our understanding is the Commission found that the utilities had not demonstrated that the costs were reasonably incurred, and therefore, they were not eligible for recovery from nuclear decommissioning trust funds for SONGS Unit 1. That's kind of the end of the story from our perspective. The Commission did not say, "Please refile as soon as possible and show us why those costs were reasonable."⁶

TURN’s position in A.15-01-014 can be understood as offering a primary and alternative recommendation. The primary recommendation was to decline to conduct a second reasonableness review for these costs in any proceeding (no “do overs”). In the event that the Commission did not agree with this outcome, TURN’s alternative recommendation was to consider the costs in the 2015 NDCTP. TURN’s primary recommendation in A.15-01-014 (to deny reconsideration of these costs) is the same as TURN’s primary recommendation

³ SCE application for rehearing of D.14-12-082, filed January 21, 2015, page 11.

⁴ Pub. Util. Code §1709 (“in all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.”) The SCE/SDG&E reply to protests (page 4) claims that §1709 is not applicable because “the Commission has continuing jurisdiction to modify its decisions pursuant to Public Utilities Code Section 1708.” However, SCE and SDG&E have not sought to pursue their remedies pursuant to §1708 by filing a petition to modify D.14-12-082.

⁵ SCE/SDG&E reply to protests, page 3.

⁶ Prehearing Conference Transcript, A.15-01-014, pages 8-9.

in the current proceeding.

SCE and SDG&E further argue that the California Nuclear Facility Decommissioning Act of 1985 requires that all decommissioning costs be paid from the Nuclear Decommissioning Trusts (NDTs) and that no costs can be born by shareholders.⁷ The SCE/SDG&E theory would render all reasonableness reviews irrelevant by stripping the Commission of any authority to assign unreasonably incurred costs to shareholders. The Commission must affirmatively reject this skewed reading of state law which is fundamentally inconsistent with a plain reading of the law and prior Commission decisions.

TURN strongly urges the Commission to direct SCE and SDG&E to remove from their current applications the \$13.9 million in SONGS 1 decommissioning costs incurred between January 1, 2009 and December 31, 2012 and decline to entertain a second reasonableness review for these costs. If the Commission permits a second review, it will encourage utilities receiving disallowances to continue to seek repeated “do overs” in future proceedings in the hopes that repeated requests for relief will ultimately pay off for shareholders to the detriment of ratepayers.

B. Application of project-based milestones to costs proposed for review in this proceeding

SCE and SDG&E propose that the development of project-based milestones not be used to determine the reasonableness of any spending considered in this proceeding.⁸ This new position, articulated by the utilities for the first time in the meet and confer report, would eviscerate the effort to use project-based milestones to assess the reasonableness of spending on completed major projects.

⁷ SCE/SDG&E reply to protests, page 4.

⁸ Meet and Confer report, page 4.

The Commission endorsed TURN's proposal to pursue this milestone-based approach in both D.14-12-082 and D.16-04-019, leaving any reasonable observer to conclude that the current proceeding is the appropriate forum for both developing and applying the milestones.

It would be a mistake to exempt all spending to date from being considered in developing the project-based milestones. These milestones necessarily span multiple years and include past, present and future spending on specific projects. Eliminating a portion of the spending on a given project from milestone-based review makes it difficult, if not impossible, to determine whether the entire milestone was achieved at reasonable cost.

TURN supports collaborative efforts to develop milestones over the second half of 2016 and is hopeful that parties can achieve some level of agreement on the appropriate division of costs. This effort should result in milestones that can be applied to determine the reasonableness of spending on completed projects in Phase 2 of the proceeding. If spending in this proceeding is not included in these milestones, the Commission will need to conduct a one-off review of the costs in this proceeding with little basis for assessing reasonableness. This one-off review would not serve the goal of ensuring that there are meaningful consistent standards and benchmarks applied to spending on these projects.

IV. DESCRIPTION OF DOCUMENTS AND INFORMATION TO BE INCLUDED IN THE RECORD

TURN expects to seek inclusion in the record of its prepared testimony and data responses obtained via discovery.⁹ While TURN will make every effort to include all relevant materials in its prepared testimony, it may be necessary to use data

⁹ It is not possible to know with certainty which specific documents TURN may rely upon in the preparation of its testimony.

responses and other appropriate materials as hearing exhibits for the purpose of cross-examination. To the extent that utilities raise new issues in rebuttal testimony, and leave TURN with no opportunity to respond through additional testimony, TURN may seek to have additional materials admitted into evidence before or during hearings.

V. NEED FOR EVIDENTIARY HEARINGS

TURN expects that there will be disagreements regarding a variety of material factual issues in this proceeding. While TURN cannot identify with specificity these disagreements given the early stage of this proceeding (and in the absence of a scoping ruling), the following topics may require hearings:

- Reasonableness of decommissioning expenses on completed projects at SONGS 1 during 2009-2012 (if permitted) and 2013-2015.
- Reasonableness of decommissioning expenses on completed projects at SONGS 2/3.
- Reasonableness of 2013-2014 SONGS nuclear fuel contract cancellation expenses.
- Appropriate project-based milestones for determining reasonableness of spending on completed projects at SONGS 2/3.
- Reasonableness of updated 2016 Decommissioning Cost Estimate for SONGS 1 and the updated estimate for SONGS 2/3.
- Reasonableness of updated Decommissioning Cost Estimate at Palo Verde Nuclear Generating Station.

Based on discovery and review of the applications, TURN intends to address these topics in prepared testimony. The responses by SCE and SDG&E in rebuttal testimony will assist with identifying issues that should be explored during evidentiary hearings.

VI. ROLE FOR ALTERNATIVE DISPUTE RESOLUTION

TURN does not believe that Alternative Dispute Resolution (ADR) processes would be useful in this proceeding. However, TURN would not oppose the use of ADR processes by other parties to address issues raised in their testimony and briefs.

VII. PROPOSED SCHEDULE

The meet and confer report contains a proposed schedule that would divide the proceeding into three separate phases. This approach is sensible and should be adopted by the Commission for issues relating to SCE and SDG&E.

Respectfully submitted,

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